

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, CINCINNATI**

EVERETT W. WHISMAN, et al.	:	
	:	
Plaintiffs	:	Case No. C-1-02-406
	:	
v.	:	Judge Beckwith
	:	Magistrate Sherman
	:	
ZF BATAVIA, LLC, et al.	:	PLAINTIFFS' MEMORANDUM
	:	IN OPPOSITION TO
	:	DEFENDANTS' JOINT MOTION
	:	FOR EXTENSION OF TIME TO
Defendants.	:	FILE REPLY BRIEF
	:	

* * * *

Plaintiffs, Everett W. Whisman, et al. ("Plaintiffs"), submit their Memorandum in Opposition to Defendants', ZF Batavia, LLC, and Ford Motor Co. ("Defendants") Joint Motion for Extension of Time to File Reply Brief. It is prejudicial to Plaintiffs that Defendants are now seeking this extension of their deadline for filing their reply memoranda after Plaintiffs filed their opposition memoranda to Defendants' two motions for summary judgment. Defendants have sought an extension due to out-of-town trips by defense counsel and a scheduled shut-down of operations for both Defendants. It is plain that Defendants and their counsel knew in advance that they would need extra time in which to file their replies, yet they did not advise Plaintiffs of same until after Plaintiffs filed their memoranda in opposition. They should have advised Plaintiffs' counsel before the motions for summary judgment were filed so that Plaintiffs' deadline could have been adjusted accordingly.

Plaintiffs recognize that Defendants honored Plaintiffs' request, made months ago, to continue the motions for summary judgment deadline because Plaintiffs' responses to Defendants' motions for summary judgment would have been due during the undersigned's anticipated paternity leave. However, this extension was not uniquely beneficial to Plaintiffs' counsel. It gave defense counsel an additional two weeks to file their motions. Plaintiffs' counsel could have, as Defendants' counsel have done here, simply sought an extension of time to file their memoranda in opposition after Defendants worked diligently to meet the original deadline for filing motions for summary judgment. Instead, Plaintiffs' counsel contacted opposing counsel about extending all of these deadlines in advance. This is how Defendants' counsel should have proceeded.

Accordingly, Plaintiffs ask this Court to deny Defendants' motion, or, in the alternative, limit the extension to something less than the unusually long extension of ten days as sought by Defendants.

Respectfully submitted,

s/ Stephen A. Simon

David M. Cook (Ohio Bar # 0023469)
Stephen A. Simon (Ohio Bar #0068268)
DAVID M. COOK, LLC
22 West Ninth Street
Cincinnati, Ohio 45202
Phone: (513) 721-7500
Fax: (513) 721-1178
e-mail: dcook@dmcllc.com
Trial Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December , I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ellen J. Garling
Jeffery L. VanWay
Baker & Hostetler LLP
312 Walnut Street, Ste. 3200
Cincinnati, Ohio 45202
(Attorneys for Ford Motor Co.)

Douglas M. Morehart
Haverkamp, Brinker, Rebold & Rhiel Co. LPA
5856 Glenway Avenue
Cincinnati, Ohio 45238-2079
(Attorney for ZF Batavia)

s/ Stephen A. Simon

ATTORNEY FOR PLAINTIFFS